

Agenda

Item #9



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: May 24, 2010

Re: Request by Diamond PAC to Rebut Presumption

The Commission staff heard from Ethan Strimling this morning on behalf of Diamond PAC, the leadership political action committee of Senator Bill Diamond.

Mr. Strimling stated that the Diamond PAC engaged Quinlan Associates of Harpswell to conduct a poll concerning two candidates in the Democratic primary election for State Senate, District 28 (Lawrence "Skip" Greenlaw and James Schatz). Mr. Strimling said that the purpose of the poll was to gather information to assist the PAC in deciding whether or not the PAC would support a candidate in the primary election. He asked whether conducting the poll, in itself, required the PAC to file a report of an independent expenditure.

Because the survey included communications to voters within the last 21 days before the primary election and because both candidates are participating in the Maine Clean Election Act, the payment for poll would be presumed to be an independent expenditure under 21-A M.R.S.A. § 1019-B(1)(B). The Commission staff responded to Mr. Strimling that if the PAC believes the expenditure was not intended to influence the election, it should file a written statement under § 1019-B(1) stating that the cost was not incurred with the intent to influence the nomination or election of a candidate. This is consistent with guidance on page 8 of the Commission's advice regarding independent expenditures (attached).

Later today, Mr. Strimling filed the attached rebuttal statement, which consists of the form developed by the Commission for this purpose and a copy of the script for the poll.

Staff Recommendation

The staff views the questions asked concerning Skip Greenlaw and James Schatz as neutral and conducted for purposes of research. The questions seem intended to gather information for the PAC, not to influence voters to support or oppose the candidates mentioned in the poll. The staff recommends that the Commission determine that the cost of the poll was not intended to influence the nomination or election of the candidates, so no independent expenditure report would be required.

21-A MRSA 1019-B. REPORTS OF INDEPENDENT EXPENDITURES

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure":

A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and [2003, c. 448, §3 (NEW) .]

B. Is presumed in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5 to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; the 35 days, including election day, before a general election; or during a special election until and on election day. [2007, c. 443, Pt. A, §20 (AMD) .]

[2007, c. 443, Pt. A, §20 (AMD) .]

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

[2003, c. 448, §3 (NEW) .]

3. (TEXT EFFECTIVE UNTIL 8/1/11) Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 448, §3 (NEW) .]

B. A report required by this subsection must contain an itemized account of each contribution or expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each contribution or expenditure and the name of each payee or creditor. The report must state whether the contribution or expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the contribution or expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate. [2003, c. 448, §3 (NEW) .]

C. A report required by this subsection must be on a form prescribed and prepared by the

commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. [2003, c. 448, §3 (NEW).]

[2003, c. 448, §3 (NEW) .]

3. (TEXT EFFECTIVE 8/1/11) Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election in a town or city that has chosen to be governed by this subchapter, a copy of the same information must be filed with the municipal clerk.

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C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. [2003, c. 448, §3 (NEW).]

[2009, c. 366, §5 (AMD); 2009, c. 366, §12 (AFF) .]

SECTION HISTORY

2003, c. 448, §3 (NEW). 2007, c. 443, Pt. A, §20 (AMD). 2009, c. 366, §5 (AMD). 2009, c. 366, §12 (AFF).

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COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

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Office: 45 Memorial Circle, Augusta, Maine

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Statement to Rebut Presumption of Independent Expenditure

Instructions: Under 21-A M.R.S.A. §1019-B, an expenditure to design, produce, or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated within the last 21 days before a primary election or 35 days before a general election is presumed to be an independent expenditure. The party making the expenditure may attempt to rebut the presumption by filing this form with the Ethics Commission. The party may attach any documents, statements, or other evidence it wishes (e.g., a copy of a printed communication or a script of a recorded communication.) The form is required to be filed with the Ethics Commission within 48 hours of making the expenditure, including on a weekend day or a holiday. The form may be filed by faxing it to (207) 287-6775, provided that the Commission receives the original within 5 days.

Party making the expenditure:

Diamond PAC

Contact person:

Ethan Strimling

Contact's mailing address:

211 Spring Street

Portland, ME 04102

Contact's telephone number(s):

207-828-8634 (hm)

207-775-0105 (WM)

Candidates named or depicted:
(use additional pages if necessary)

Tim Skutz

Lawrence "Skip" Greenleaf


Payee or creditor (including address):

Quintan Associates

182 Hildreth Road

Hampden, Maine 04079

The above expenditure was not incurred with the intent to influence the nomination, election, or defeat of a candidate.


Signature of authorized individual

5/24/10
Date

Hello, I'm calling for Quinlan Associates, a national public opinion polling firm. I'd like to ask you a few questions on a strictly confidential basis.

1. Are you a registered Democrat in the state of Maine? (If not, ask to speak to Democratic voter at this number. If no Democratic voter, terminate interview)

2. How likely are you to vote in the June 8, 2010 Democratic primary? (1-10 scale)

3. There are two Democrats running for the State Senate in your area. They are Lawrence "Skip" Greenlaw and Jim Shatz. Currently do you favor Skip Greenlaw or Jim Shatz in the Democratic primary this June 8? (rotate choices)

Greenlaw/strong 1

Greenlaw/lean 2

Shatz/lean 3

Shatz/strong 4

Don't know 5

4. If Senator Dennis Damon endorsed one of these candidates, would that influence your vote in favor of that candidate?

A lot 1

A little	2
Not at all	3
Don't know	4

5. If Former Senator Jill Goldthwait endorsed one of these candidates, would that influence your vote in favor of that candidate?

A lot	1
A little	2
Not at all	3
Don't know	4

Now I'd like to ask you a few questions for purely statistical purposes?

6. Sex/occupation

Male	1
Female/works at home	2
Female/works outside	3

7. Location

Town Cluster #1 (Trenton/Cranberry)	1
Town Cluster #2 (Surry to Stonington)	2
Town Cluster #3 (Ellsworth to Gouldsboro)	3

Thank you.

Quinlan Associates
182 Hildreth Road
Harpwell, Maine 04079

To: Leadership PAC
From: Chris Potholm
Subject: State Senate #28 Polling "Quick Look"
Date: May 23, 2010

\$2300 now due

Thank you.



Advice Regarding Independent Expenditures for the 2010 Elections

This memo answers some frequently asked questions about whether independent expenditure reporting is required. A copy of the relevant law (21-A M.R.S.A. § 1019-B) is attached with the corresponding Commission rule regarding independent expenditures. For advice about how to file an independent expenditure report, please see the instructions on the reporting form.

What is an “independent expenditure?”

Independent expenditures are payments or obligations made by individuals and organizations, acting independently of candidate campaigns, for certain communications referring to clearly identified candidates.

More specifically, payments or obligations made for communications (for example, advertisements and literature) that expressly advocate the election or defeat of a candidate are always considered independent expenditures.

In addition, payments or obligations made for communications are presumed to be independent expenditures if the communication 1) is disseminated within 21 days before a primary election or within 35 days before the general election, 2) names or depicts a clearly identified candidate, and 3) involves a race in which a Maine Clean Election Act certified candidate is running.

These two periods before an election are referred to below as the “presumption periods.”

Presumption Periods for the 2010 Elections		
Election	Length (includes election day)	Dates
Primary	21 days	May 19 – June 8
General	35 days	September 29 – November 2

Some communications are exempt from the presumption, such as slate cards sent by political party committees (please see exceptions below).

How do I know if my advertisement or literature “expressly advocates” the election or defeat of a candidate?

The term “expressly advocate” is defined in Chapter 1, Section 10(2)(B) of the Commission Rules, which is attached to this memo. The definition includes phrases such as “Jones for House of Representatives” or “Vote for the Governor,” and other words which in context can have no reasonable meaning other than to urge the election or defeat of one or more clearly identified candidates.

by the Commission. As noted above, many communications sent by a membership organization to its members are not covered by the rebuttable presumption.

Are communications designed to encourage individuals to register to vote or to vote covered by the presumption?

The Election Law excludes from the legal definition of expenditure "activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate." (21-A M.R.S.A. § 1012(2)(B)(10)) Those communications are not covered by the rebuttable presumption. If communications designed to encourage individuals to register to vote or to vote name or depict a clearly identified candidate and meet the other requirements of the presumption (including the \$100 per candidate threshold), the person making the expenditure may rebut the presumption by filing a written statement explaining that the materials were distributed for the purpose of encouraging voting or registration and were not intended to influence the election.

Are polling, voter surveys, and public opinion research covered by the presumption?

* [Some live scripted conversations made by telephone callers within the presumption periods could be covered by the rebuttable presumption. If a public opinion survey within the presumption periods contains references to a candidate, and the person funding the survey believes that the references were not made with the intent to influence the election, the person should file a rebuttal statement. If a survey relates to a public issue and does not mention a candidate's name, it is not subject to the presumption and no report or rebuttal statement must be filed. If public opinion research (e.g., voter identification information) is contributed to a PAC to influence an election, the PAC must report the research as an in-kind contribution including the fair market value of the research.

Are Section 527 organizations covered by the law?

National organizations are subject to the Maine Election Law if they raise or spend money regarding state candidates in Maine. This includes so-called Section 527 organizations that are organized outside the State of Maine. If a Section 527 organization makes an expenditure that is covered by the rebuttable presumption, it is required to file an independent expenditure report or a rebuttal statement.

What is the consequence of filing an independent expenditure report late?

The late filing of an independent expenditure report can result in the assessment of a civil penalty up to \$5,000 under 21-A M.R.S.A. § 1020-A(4).